

BOARD OF APPEALS CASE NO. 5261

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BEFORE THE

APPLICANT: Charles Rindone

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ZONING HEARING EXAMINER

REQUEST: Variance to allow an existing town-house and proposed deck within the required rear yard setback; 1931 Deer Spring Court, Forest Hill

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 6/12/02 & 6/19/02

HEARING DATE: August 5, 2002

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Record: 6/14/02 & 6/21/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Charles Rindone, is requesting a variance pursuant to Sections 267-36B, Table V, and 267-23C(a)(6), to allow an existing townhouse within the required 40 foot rear yard setback (38.1 feet existing), and a proposed deck within the required 30 foot rear yard setback (26.1 feet proposed) in an R2/COS District.

The subject parcel is located at 1931 Deer Spring Court, within the subdivision of Deer Spring, and is more particularly identified on Tax Map 40, Grid 1E, Parcel 426, Lot 39. The subject parcel consists of 0.1121± acres, is zoned R2/COS, and is entirely within the Third Election District.

Mr. Charles Rindone appeared and testified that he is the Applicant in the subject case. When he purchased his home, the Applicant had an additional walkout added to allow for the future construction of a deck on the rear of the home. When he applied for the building permit related to the deck, he discovered that his house was too close to the rear property line. Because the house was placed on the property improperly by the original surveyor, the deck will also encroach into the rear setback. The Applicant intends to use a Trex composite material that is only available in 12 foot lengths. He would be limited to an 8 foot deck if the variance is not granted – a size that would make the deck unusable. Additionally, the Trex material would need to be cut and the waste would be costly. There are similar decks in his neighborhood. The Applicant stated that his lot is irregularly shaped having 6 sides, fronts to a community parking area unlike other lots and the rear of his house, and also, unlike other houses in the neighborhood, the Applicant's house faces the side of the house next door.

Case No. 5261 – Charles Rindone

The Applicant did not believe there would be any adverse impacts to neighbors as a result of a grant of the two variances. He believes his lot is unique for the reasons stated above and that a denial of the variances would result in tremendous hardship, first, because the house would need to be torn down and rebuilt on the property within the setbacks and secondly, he would be deprived of the use of a deck similar in size, type and location as many of his other neighbors enjoy.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning (Department). Mr. McClune testified that the Department agreed that the house was originally located improperly on the parcel by the original surveyor. This mis-location has resulted in the need for both of the variances requested herein. The deck is consistent with other decks found in the neighborhood and the Department found that no adverse impacts would result from a grant of either variance, agreeing that undue hardship to the Applicant would result from a denial.

There were no persons who appeared in opposition to this request.

CONCLUSION:

The Applicant is requesting a variance pursuant to Sections 267-36B, Table V and 267-23C(a)(6), to allow an existing townhouse within the required 40 foot rear yard setback (38.1 feet existing) and a proposed deck within the required 30 foot rear yard setback (26.1 feet proposed) in an R2/COS District.

Section 267-23C(a)(6) of the Harford County Code provides:

“Exceptions and modifications to minimum yard requirements.

(1) Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.”

Case No. 5261 – Charles Rindone

Section 267-11 of the Harford County Code permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

The Hearing Examiner agrees with the Applicant and the Department regarding the uniqueness of both the property and the Applicant’s situation. Through no fault of the Applicant’s, the original location of the house was wrong. This mistake results in the need for a variance regarding the location of the house and the proposed deck. Clearly the house was intended to have a deck constructed and the Applicant incurred additional cost to assure an adequate and raised walkout. The grant of these tow requests will not result in any adverse impact to neighboring properties nor will the purposes of the Code be impaired by approval. It is clear that unreasonable hardship would result if the variance were denied requiring the Applicant to tear down and reconstruct the home.

For the foregoing reasons, the Hearing Examiner recommends approval of the request, subject to the conditions that the Applicant obtain any and all necessary permits and inspections.

Date AUGUST 22, 2002

**William F. Casey
Zoning Hearing Examiner**